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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
10/759,900	01/17/2004	Kok Hung Leung	FHKI 1001 DR 3822	8459

7590 06/13/2006

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EXAMINER

HANEY, RICHAE LEE

ART UNIT	PAPER NUMBER
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3765

DATE MAILED: 06/13/2006

Please find below and/or attached an Office communication concerning this application or proceeding.

Office Action Summary

Application No.

10/759,900

Applicant(s)

LEUNG, KOK HUNG

Examiner

Richale L. Haney

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-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) OR THIRTY (30) DAYS, WHICHEVER IS LONGER, FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

Status

- 1) ☒ Responsive to communication(s) filed on 1/17/2004.
- 2a) ☐ This action is **FINAL**. 2b) ☒ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

Disposition of Claims

- 4) ☒ Claim(s) 1-12 is/are pending in the application.
- 4a) Of the above claim(s) _____ is/are withdrawn from consideration.
- 5) ☐ Claim(s) _____ is/are allowed.
- 6) ☒ Claim(s) 1-12 is/are rejected.
- 7) ☐ Claim(s) _____ is/are objected to.
- 8) ☐ Claim(s) _____ are subject to restriction and/or election requirement.

Application Papers

- 9) ☐ The specification is objected to by the Examiner.
- 10) ☒ The drawing(s) filed on 22 November 2004 is/are: a) ☐ accepted or b) ☒ objected to by the Examiner.
Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).
Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).
- 11) ☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

Priority under 35 U.S.C. § 119

- 12) ☒ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
- a) ☒ All b) ☐ Some * c) ☐ None of:
1. ☒ Certified copies of the priority documents have been received.
2. ☐ Certified copies of the priority documents have been received in Application No. _____.
3. ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).

* See the attached detailed Office action for a list of the certified copies not received.

Attachment(s)

- 1) ☒ Notice of References Cited (PTO-892)
- 2) ☐ Notice of Draftsperson's Patent Drawing Review (PTO-948)
- 3) ☐ Information Disclosure Statement(s) (PTO-1449 or PTO/SB/08)
Paper No(s)/Mail Date _____
- 4) ☐ Interview Summary (PTO-413)
Paper No(s)/Mail Date. _____
- 5) ☐ Notice of Informal Patent Application (PTO-152)
- 6) ☐ Other: _____

DETAILED ACTION

Drawings

1. The drawings are objected to as failing to comply with 37 CFR 1.84(p)(4) because reference characters "35" and "3" have both been used to designate a cape. Corrected drawing sheets in compliance with 37 CFR 1.121(d) are required in reply to the Office action to avoid abandonment of the application. Any amended replacement drawing sheet should include all of the figures appearing on the immediate prior version of the sheet, even if only one figure is being amended. Each drawing sheet submitted after the filing date of an application must be labeled in the top margin as either "Replacement Sheet" or "New Sheet" pursuant to 37 CFR 1.121(d). If the changes are not accepted by the examiner, the applicant will be notified and informed of any required corrective action in the next Office action. The objection to the drawings will not be held in abeyance.

2. The drawings are objected to as failing to comply with 37 CFR 1.84(p)(4) because reference character "4" has been used to designate both the string fastening (in figures 2 and 4) and the tie strap (figures 1 and 5). Corrected drawing sheets in compliance with 37 CFR 1.121(d) are required in reply to the Office action to avoid abandonment of the application. Any amended replacement drawing sheet should include all of the figures appearing on the immediate prior version of the sheet, even if only one figure is being amended. Each drawing sheet submitted after the filing date of an application must be labeled in the top margin as either "Replacement Sheet" or "New Sheet" pursuant to 37 CFR 1.121(d). If the changes are not accepted by the examiner,

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the applicant will be notified and informed of any required corrective action in the next Office action. The objection to the drawings will not be held in abeyance.

Claim Rejections - 35 USC § 112

3. The following is a quotation of the second paragraph of 35 U.S.C. 112:

The specification shall conclude with one or more claims particularly pointing out and distinctly claiming the subject matter which the applicant regards as his invention.

4. Claims 9 and 12 are rejected under 35 U.S.C. 112, second paragraph, as being indefinite for failing to particularly point out and distinctly claim the subject matter which applicant regards as the invention.

Claims 3, 7 and 9 recite a flexible elastomeric frame that is a rubber tube frame. A flexible elastomeric frame and a rubber tube frame provide no clear meaning to one of ordinary skill in the art. It is assumed by the examiner that the applicant is referring to the casing, which surrounds the opening of the hood. Typically, a casing is formed by folding over a material of the base fabric and then stitching. There is no indication that the material of the cape or hood is rubber or elastomeric and therefore it is unclear what the applicant means by a flexible elastomeric frame or rubber tube frame. The applicant specification does not provide any clarity to the structure of this claimed element.

Claim 12 recites a seam that is "doubled over." The term doubled over does adequately describe a type of seam and neglects to provide a clear meaning for the phrase. It is unclear how the phrase doubled over limits the type of seam claimed. The applicants disclosure does not provide examples or clarification to what a doubled over seam consists of.

Claim Rejections - 35 USC § 102

5. The following is a quotation of the appropriate paragraphs of 35 U.S.C. 102 that form the basis for the rejections under this section made in this Office action:

A person shall be entitled to a patent unless –

(b) the invention was patented or described in a printed publication in this or a foreign country or in public use or on sale in this country, more than one year prior to the date of application for patent in the United States.

6. Claims 1 – 4, 6 – 8, 10, and 11 as best understood, are rejected under 35 U.S.C. 102(b) as being anticipated by Lieberman (US 5,165,111). The device of Lieberman discloses a backpack type satchel comprising a bag (10) and a connected rain hat and cape attached to the bag to form an integrated unit (Column 1, lines 5 – 10). The front edge of the hat and cape have a flexible frame that is a flexible tube frame in as much as shown and disclosed by applicant (see the dashed line at the edge of the hat and cape in Fig. 5A). The rain cap has a string capable of tying and keeping the hat and cape on the wearer and accommodating different shaped faces (5A). The garment would inherently have seams that are doubles over since all seams require the joining of two pieces of fabric, creating a “doubled” layer of fabric. Both the bag and the hat and cape are made from waterproof material (Column 4, lines 12 –14 and Column 6, lines 21 – 26).

7. Claims 1 – 8 and 10- 12, as best understood, are rejected under 35 U.S.C. 102(b) as being anticipated by Waldman et al. (US 5,564,125). The device of Waldman discloses an integral (Column 2, lines 35 –40) and waterproof (Column 4, lines 50-52) bag and cape device having a bag portion (10) in which the cape (46) and

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hat (59) are stored. The hat portion and the cape portion have a frame that is a flexible tube frame in as much as shown by applicant (See Figure 3 at the edge of the hat portion). The hat portion further comprises a flexible tie strap (62) which is capable of being tied and securing the hat and cape portion to the wearer and allowing the opening to be adjusted to accommodate differently shaped faces and a flexible fastening located on the top of the hat (61) for accommodating differently shaped head (Column 4, lines 66 - 67). The garment would inherently have seams that are doubles over since all seams require the joining of two pieces of fabric, creating a "doubled" layer of fabric.

8. The following is a quotation of the appropriate paragraphs of 35 U.S.C. 102 that form the basis for the rejections under this section made in this Office action:

A person shall be entitled to a patent unless –

(e) the invention was described in a patent granted on an application for patent by another filed in the United States before the invention thereof by the applicant for patent, or on an international application by another who has fulfilled the requirements of paragraphs (1), (2), and (4) of section 371(c) of this title before the invention thereof by the applicant for patent.

The changes made to 35 U.S.C. 102(e) by the American Inventors Protection Act of 1999 (AIPA) and the Intellectual Property and High Technology Technical Amendments Act of 2002 do not apply when the reference is a U.S. patent resulting directly or indirectly from an international application filed before November 29, 2000. Therefore, the prior art date of the reference is determined under 35 U.S.C. 102(e) prior to the amendment by the AIPA (pre-AIPA 35 U.S.C. 102(e)).

9. Claims 1 - 4 and 6 - 11, as best understood, are rejected under 35 U.S.C. 102(e) as being anticipated by Hinnant (US 6,751,806). The device of Hinnant discloses an

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integral, waterproof bag and hat/cape device having a pocket for storing the hat and cape (20). The hat portion of the device has a front edge comprising a flexible frame that is a flexible tube frame in as much as shown my applicant (see the dashed line at the edge of the hat, Fig. 5) and a flexible tie strap on the rain hat (38) capable of being tied to hold the hat of the wearer and accommodate different facial shapes. The device of Hinnant further discloses that the drawstring combined with the frame is a type of an elastic/rubber (Column 3, lines 60 –65). Both the garment and the backpack are made from waterproof material (Column 2, lines 5 –8). The garment would inherently have seams that are doubles over since all seams require the joining of two pieces of fabric, creating a “doubled” layer of fabric.

Conclusion

10. The prior art made of record and not relied upon is considered pertinent to applicant's disclosure.

Tomich (US 2,971,198), McLaughlin (US 4,389,735), Park (US 4,563,777), Farria (US 5,676,293), and Sakurai (US 5,946,729) show similar bag and cape combinations.

Any inquiry concerning this communication or earlier communications from the examiner should be directed to Richale L. Haney whose telephone number is 571-272-8689. The examiner can normally be reached on M-F 8:00 - 4:30.

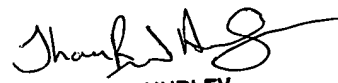
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If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, John J. Calvert can be reached on 571 -272-4983. The fax phone number for the organization where this application or proceeding is assigned is 571-273-8300.

Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see <http://pair-direct.uspto.gov>. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free). If you would like assistance from a USPTO Customer Service Representative or access to the automated information system, call 800-786-9199 (IN USA OR CANADA) or 571-272-1000.

Richale L. Haney
Patent Examiner
Art Unit 3765
June 7, 2006

RLH


SHAUN R. HURLEY
PRIMARY EXAMINER